A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No.1607 of 2005

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CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

PETITIONERS : 1 A.Sriniwas Rao, S/o Shri A. Lachhanna, Aged about 34 years, R/o. 157/8, Portor Kholi, Bilaspur (Chhattisgarh)

2 Ram Kishore Sharma S/o. Ramanand, aged about 36 years, Near Kedia Rest House, Hemunagar, Bilaspur (CG)

3 Harinarayan Yadav, S/o Shukhiram, R/o. Block No. 157 Portor Kholi, Shiv Mandir, Bilaspur (CG)

4 G.Venkat Rao, S/o. Guruvulu, aged about 41 years, Loco Block no. 71/1 Bilaspur (Chhattisgarh)

5 Awishin Kumar Yadav, S/o Jeewar Khan, aged about 40 years, R/o. Near Jhopadapara Tap Bilaspur (Chhattisgarh)

6 Abdul Kalam Khan S/o. Abdul Latif Khan Aged about 35 years, R/o Gurunanak Chowk, Torwa Kasimpara Nowkavihar Bilaspur (CG)

7 P.V. Ramma Rao, S/o P. Madhav Rao, aged about 42 years, R/o Ramnivas, Near Power House Near Trba Kedia Rest House Bilaspur

Versus

RESPONDENTS : 1 Union of India Ministry of Railway Through General Manager South Eastern Central Railway

Bilaspur Zone, Bilaspur (Chhattisgarh)

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: 2 Divisional Railway Manager
South Eastern Central Railway
Bilaspur Zone, Bilaspur (Chhattisgarh)

: 3 Senior Divisional Personnel Officer
South Eastern Central Railway
Bilaspur Zone, Bilaspur (Chhattisgarh)

Present:-
Shri Sanjay K. Agrawal, learned counsel for the petitioners.
Shri Abhishek Sinha, learned standing counsel for the respondents/Railways.

ORAL ORDER
(Passed on 25th August, 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

This writ petition arises out of an order dated 19.02.2004 of Central Administrative Tribunal, Jabalpur Bench (for short the "Tribunal') passed in Review Application No. 03 of 2004 for review of the order made by the Tribunal dated 30.09.1999 in Original Application No. 182 of 1999.

2. There was 4 years 3 months and 3 days delay in filing the Review Application before the Tribunal. The Tribunal not being satisfied with the explanation offered by the petitioners, has not condoned the delay and by its order dated 19.02.2004, dismissed the Review Application holding that it was barred by limitation under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987. Feeling aggrieved by the above order passed in the Review Application as well as the main order dated 30.09.1999

passed in O.A. No. 182 of 1999, the petitioners have preferred this writ petition under Articles 226/227 of the Constitution of India.

3. We have heard Shri Sanjay K. Agrawal, learned counsel for the petitioners and Shri Abhishek Sinha learned standing counsel for the Railways. Shri Sanjay K. Agrawal, learned counsel for the petitioners, would contend that the Tribunal is not justified in dismissing the Review Application, because, according to the learned counsel, there was sufficient cause for the petitioners not to file the Review Petition immediately after 30.09.1999. Learned counsel would draw our attention to what is stated in para 2 of the application for condonation of delay in preferring the Review Application No. 03/2004 which is marked as Annexure P-12 at page 2 of the material papers along with I.A. No. 8083 of 2006. Learned counsel would contend that the order made by the Tribunal on 30.09.1999 holding that it has no jurisdiction is *ex facie* illegal and against the settled position in law. Learned counsel would contend that in that view of the matter, the Tribunal ought not to have dismissed the Review Application No. 03 of 2004 being barred by limitation and ought to have reviewed order dated 30.09.1999 in the interest of justice and equity. Learned counsel would highlight that similar was the circumstance of another person who is the applicant in Original Application Nos. 27 of 1999 and 323 of 1999 who got the relief by virtue of the order made by the Tribunal itself vide order dated

06.09.2004, and therefore, the Railway Administration is not justified in practicing invidious discrimination between the two similarly circumstanced employees. On the other hand, Shri Abhishek Sinha, learned standing counsel for the Railways, would submit that there is absolutely no explanation much less sufficient explanation to condone the enormous delay of 4 years 3 months and 3 days. It was highlighted by the learned standing counsel for the Railway Administration that a subsequent order made by the Tribunal after a lapse of 4 years 3 months and 3 days in Original Application Nos. 27 of 1999 and 323 of 1999 would not be a factor which could constitute sufficient cause to condone the delay as held by the Courts in catena of decisions. Shri Sanjay Agrawal, in support of his submission, placed reliance on judgments of the Supreme Court in **Inder Pal Yadav And Others Vs. Union of India And Others**[1], **Lt. Governor of Delhi And Others Vs. Dharampal And Others**[2], **Commissioner of Sales Tax, J & K And Others Vs. Pine Chemicals Ltd. And Others**[3], **Director, Government of India Vs. General Secretary, Central Government Small-Scale Industries Organization Employees' Union And Another**[4], **Union of India And Others Vs. Deepchand Pandey & Others**[5].

4. Having heard learned counsel for the parties, the only

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1. (1985) 2 Supreme Court Cases 648 2. (1990) 4 Supreme Court cases 13
3. (1995) 1 Supreme Court Cases 58 4. (1998) 5 Supreme Court Cases 630
5. (1992) 4 Supreme Court Cases 432

question that arises for our consideration is whether the Tribunal is justified and legally acted in dismissing the Review Application No. 03 of 2004 filed by the petitioners on the ground of delay and laches and being barred by limitations under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987. 133

5. The Tribunal by its order dated 30th September, 1999 dismissed the O.A. No. 182 of 1999 filed by the petitioners herein and four others. The said order reads as follows:

"ORDER (ORAL)

(Passed on this the 30th day of September, 1999)

By Hon'ble Shri Justice R.N. Ray-Vice Chairman:

"Heard the learned counsel of parties. There was difference of opinion in similar matter viz. (Bheesam Singh & another Vs. Union of India & others, O.A. No. 71/97 and other connected matters) before this Bench as regards jurisdiction of the C.A.T. The matter was accordingly referred to the Hon'ble Chairman. The Hon'ble Chairman vide order dated 29.9.1998 settled the dispute holding that the Tribunal had no jurisdiction to entertain such matters as they came under the purview of the Industrial Disputes Act, 1947.

2. In view of what has been stated above, the O.A. is hereby dismissed. Earlier also similar matters have been dismissed by this Bench on 12.7.1999 in the cases of V.K. Singh Vs. Union of India & others, O.A. 556/92 and other connected matters. The applicants are at liberty to agitate their grievance before the appropriate forum.

3. The time consumed before the Tribunal should be taken into consideration for the condonation of delay under the provisions of Section 5 read with Section 14 of the Limitation Act, 1963.

4. There shall be no order as to costs.

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Sd/-
(H.D. Gupta)
Member (A)

Sd/-
(R.N. Ray)
Vice Chairman"

6. The scope of power of review as envisaged under Order 47 rule 1 of Code of Civil Procedure is very limited and the review must be confined strictly on to the errors apparent on the face of the record. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'. Although, the concept 'error apparent on the face of record' cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, it is well settled that each and every error of law is not an error apparent on face of the record. In other words, a mere error of law is not a ground for review. Only a manifest error would be a ground for review. A review Court cannot act as an appellate Court and error on the face of the record means an error which strikes one by merely looking at record and would not require any long-drawn process of reasoning. The review proceedings cannot be equated with the original hearing of the case and the case cannot be re-heard only on the ground that the law has not been properly considered and applied. If the arguments raised before the Court or the Tribunal were considered and decided in the judgment, the petitioner, if he has any grievance against the judgment, can prefer an appeal but if the provisions of law or judgments of the Courts having binding authority have not been considered in a particular

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manner in which the petitioner wanted to agitate it, then, that cannot be a ground for reviewing the judgment. If the view taken by the Court in the judgment is a possible view, having regard to the facts discernible from the facts on record, then, it cannot be said to be an error apparent on the face of the record and no review can be made.

7. When we peruse the order of the Tribunal dated 30th September, 1999 in O.A. No. 182 of 1999, it is quite apparent that the petitioners were represented by a counsel before the Tribunal and the Tribunal dismissed the Original Application on the basis of its earlier order dated 29.09.1998 passed in the case of **Bhessam Singh & another Vs. Union of India & others,** O.A. No. 71 of 97 and other connected matters and order dated 12.07.1999 in the case of **V.K. Singh Vs. Union of India** – O.A. No. 556 of 1992 and other connected matters. In the entire order, there is absolutely no reference to any argument advanced on behalf of the petitioners about the maintainability of the original application nor citing any case law in support of such contention. When that is the position as reflected in the order dated 30th September, 1999, quite curiously, it was argued before us that even on the date of the order the law was settled with regard to the maintainability of the original application. It needs to be noticed that obviously no opposition was raised by the learned counsel for the petitioners to dismiss the application as not maintainable and no case law was cited in support of such plea. The omission

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to cite an authority of law is not a ground for reviewing the prior judgment saying that there is an error on the face of the record since the counsel has committed an error in not bringing to the notice of the Court the relevant precedents, as held by the Apex Court in the case of **Dokka Samuel Vs. Dr. Jacob Lazarus Chelly**[6], even assuming the law relating to maintainability of the original application as on the date of the order was well settled. The power of review is not absolute and is hedged in by the restrictions/limitations indicated in Order 47 rule 1 of the C.P.C. and a review cannot be claimed and/or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier.

8. There is no necessity to dilate on this aspect further, because, in this case, the Court is not so much concerned with the scope of review, but essentially it is concerned with the question whether the enormous delay in filing the review petition could be condoned in the facts and circumstances of the case.

9. 'Law helps the diligent not indolent person' is often quoted and reiterated principle to highlight the rationale behind the law of limitation. There is no need for us to add case law in that regard. Law reports contain abundant instances. Although it is said that a person who approaches Tribunal/ Forum after the limitation prescribed by the statute has to

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6. (1997) 4 SCC-478

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explain each day's delay to the satisfaction of the Court or Tribunal, as the case may be, even practising liberalism in the peculiar facts and circumstances of this case, we do not find any explanation much less satisfactory explanation to constitute a 'sufficient cause' to condone the enormous delay of 4 years 3 months and 3 days. In Para 2 of the application for condonation of delay in preferring Review Application No. 182 of 1999, it is stated thus:

> "That, although the O.A filed by the applicants was dismissed way back on 30.9.1999 for want of jurisdiction, but the identical case has been adjudicated upon on merits recently in O.A. No. 323/99 and O.A. No. 27/99. The judgments in the aforesaid cases were delivered on 10.12.2003 at Bilaspur. As already stated in the review petition, the case of the applicants is exactly identical to those who were applicants in the aforesaid O.As. Thus, the delay if any in filing the review application is liable to be condoned to maintain parity as per Article 14 of the Constitution of India".

10. This is the only explanation offered by the petitioners. It is quite clear that after the Tribunal passed the adverse order against the petitioner on 30.09.1999, but, they slept over the matter till the judgment in Original Application Nos. 27 of 1999 and 323 of 1999 was delivered by the Tribunal on 06.09.2004. According to learned counsel for the petitioner, even as on 30.09.1999, the law was settled and the Tribunal had the jurisdiction to entertain the Original application and therefore, it ought not to have rejected the Original Application as not maintainable. If that is the understanding of the petitioners, we do not find any reason for not assailing the impugned order

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without any loss of time and within limitation. There was absolutely no impediment for the petitioners to work out their legal remedies either by way of review or approaching this Court under Articles 226/227 of the Constitution of India. The petitioners, for the reasons best known to them, did not resort to such lawful means and the procedures available to them. It is not even the case of the petitioners that they did not seek review before the Tribunal or they did not approach this court under Article 226/227 of the Constitution immediately after 30.09.1999 because of the pendency of Original Application Nos. 27 of 1999 and 323 of 1999 and they were awaiting for the order to be handed down by the Tribunal in those Original Applications. Simply because after several years, in somebody's case, the Tribunal has taken a view which is in variance or different from the view taken by it in its order dated 30.09.1999 in Original Application No. 182 of 1999, that itself without anything further would never be a justification for the Court or the Tribunal to ignore the enormous delay of 4 years 3 months and 3 days and entertain the review application.

11. There is also no merit in the contention of the learned counsel for the petitioners that similarly circumstanced two employees are treated differently by the Railway Administration which is a 'State' within the meaning of Article 12 of the Constitution of India. It is true that 'likes should be treated alike' is a constitutional principle flowing from the 'equality clause' of Article 14 of the constitution. In our

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considered opinion, the applicants in Original Application No. 323 of 1999 and the petitioners herein do not belong to a "well defined class" for the purpose of Article 14 of the Constitution. In other words, according to us, they belong to different classes. The petitioners belong to a class of 'indolent persons' whereas the applicants in Original Application No. 27 of 1999 belong to a class of 'diligent persons'. To repeat again, law helps the diligent and not indolent persons.

12. The judgments cited by the learned counsel for the petitioner are not on the point and they do not have any bearing on the decision-making in this case. We are not on merit. If the Court were to condone this enormous delay and entertain the writ petition at this distance of time on the basis of an affidavit which is as bald as it could be, it would be travesty of justice and it would tantamount to questioning the wisdom/rationale behind the limitation law. Looking from any angle, we do not find any reason to entertain this writ petition, and that we cannot take any exception to the order of the Tribunal.

13. Writ petition is therefore dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge